93-877

Supreme Court, U.S.
FILED
DEC - 3 1993
OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

EDITH MAE GRACEY,
PETITIONER

VS.

BARBARA M. DAY,
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

EDITH MAE GRACEY, pro se
512 MIFFLIN BOULEVARD
SHILLINGTON, PA 19607
(215) 777-8756

QUESTIONS PRESENTED

1. Whether the decision and order of the District Court denied petitioner Edith Gracey due process by issuing the order before her submittal of her scheduled Reply Brief.

2. Whether petitioner was denied due process when the District Court withheld portions of the record from the Third Circuit Appeals Court.

3. Whether 42 Pa.C.S.A. 8101 and 41 P.S.202 are the controlling laws on the issue of post-judgment rate of interest when a contract is silent.

PARTIES TO THE PROCEEDINGS

Parties listed in the proceedings below who appear on the docket are Dale Lapp, Esquire (counsel for Trustee Frederick Reigle,Esquire) who advised the Office of the Clerk he would not participate. Trustee Frederick Reigle, Esquire and U.S.Trustee Frederic Baker did not respond to a letter from the Office of the Clerk. Therefore, the only party to this proceeding would be Respondent Barbara M. Day (counsel: Mark Tunnell, 119 North High Street, West Chester,Pa.19381;telephone 215-696-8225).

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STATUTES

U.S.CONSTITUTION,AMENDMENT 5

42 PA.C.S.A. 8101

41 P.S. 202

FRAP RULE 34

BANKRUPTCY RULE 8009(a)(3)

FRAP RULE 28(c)

NO._____

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PETITION FOR WRIT OF CERTIORARI
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OF APPEALS FOR THE THIRD CIRCUIT

OPINIONS BELOW

The Judgment Order of the Third Circuit Court of Appeals appears as Appendix "A" to this Petition. The Order of the District Court appears as Appendix "B". The Order of the Bankruptcy Court appears as Appendix "C".

JURISDICTION

The judgment order of the Court of Appeals (Appendix "A") was entered on August 10,1993. Rehearing (FRAP Rule 40) was denied on September 9, 1993 (Appendix "D"). The Motion for Stay of Mandate was granted on October 19,1993 to file a writ by December 8. Jurisdiction of this court is invoked under Supreme Court Rule 10.1 (a)(c).

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

U.S.Constitution,Amendment five provides:

> No person shall be held to answer for a capital,or otherwise infamous crime, unless on a presentment or indictment of a grand jury,except in cases arising in the land or naval forces,or in the malitia,when in actual service in time of war or public danger;nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself,nor be deprived of life,liberty,or property, without due process of law;nor shall private property be taken for public use, without just compensation.

Pa: 42 Pa.C.S.A. 8101: INTEREST ON JUDGMENTS:

> Except as otherwise provided by another statute, a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award.

Pa: 41 P.S. 202: LEGAL RATE OF INTEREST:

> Reference in any law or document enacted or executed heretofore or hereafter to "legal rate of interest" and reference in any document to an obligation to pay a sum of money "with interest" without specification of the applicable rate shall be construed to refer to the rate of interest of six per cent per annum.

STATEMENT OF THE CASE

Two real estate properties of Edith Gracey were sold by the U.S. Bankruptcy Court. Creditor Barbara Day listed a principal amount due of $31,297.24 (based on a judgment lien in Berks County Court in Pennsylvania). Trustee Frederick Reigle, Esquire paid Day a total of $89,387.89. Reigle overpaid Day post-judgment interest using the mortgage contract rate of 14%, instead of using the Pennsylvania statutory post-judgment interest rate of 6%. The overpayment amounts to $35,530.

Gracey filed an objection to the payment to Day of post-judgment interest at the 14% contract rate rather than the Pa. legal post judgment rate of 6% (the contract was silent on the interest rate after default, maturity or confession of judgment). The decision and Order of the Bankruptcy Court changed the issue to the maximum allowed contract interest rate. Gracey appealed to U.S. District Court.

("STATEMENT OF THE CASE"-continued)

The appeal issue of Gracey to the District Court was the post-judgment interest payment to Day at a rate of 14% rather than the statutory rate of 6% (an overpayment of $35,530). Day attempted to switch the appeal issue to the maximum allowable contract rate.

The District Court Schedule For Briefs called for a Gracey Brief, Day Answer Brief, and Gracey Reply Brief. Gracey filed a timely Brief. Appellee Day filed a Brief on 1/12/93. One day later,on 1/13/93, District Court Judge Charles R. Weiner changed the appeal issue to the maximum usury rate and affirmed the Bankruptcy Court. A Gracey Reply was required because the Day Brief contained two critical items: (1) admission that the contract did not include a rate for interest after default; (2) a destructive derogatory tirade against Gracey proceeding pro se. Gracey filed a timely Reply Brief on 1/19/93 but was denied due process because Judge Weiner had already entered his Order.

Gracey appealed the District Court Order to the Third Circuit. Briefs were filed by Gracey and Day. Gracey requested Oral Argument. Oral Argument was denied in the District Court and in the Third Circuit.

Third Circuit Local Rule 11.2 requires,"In all pro se cases the entire record shall be certified and transmitted to the clerk of this Court". The District Court certification of the record shows that, "no original exhibits were attached"; "Pleading # 3 not included" (which is Gracey's Brief); and papers from some other unknown case were included.

The appeal in the Third Circuit was submitted to the Court on 6/23/93. Gracey was denied due process because the decision by the Third Circuit was based on an incomplete record from the District Court. The Judgment Order of Judge Stapleton AFFIRMED and costs were taxed against appellant Gracey.

REASONS FOR GRANTING THE PETITION

I.

GRACEY WAS DENIED DUE PROCESS BECAUSE THE DISTRICT COURT ISSUED THE DECISION BEFORE SUBMITTAL OF HER SCHEDULED REPLY BRIEF

The Fifth Amendment to the U.S.Constitution provides no person shall "be deprived of life, liberty, or property, without due process of law".Gracey had a right to file a Reply Brief. The right to file a Reply Brief is clearly stated in Bankruptcy Rule 8009 (a)(3), and FRAP Rule 28(c). The District Court Briefing Schedule required a Reply Brief be filed by 1/22/93. Gracey filed a timely Reply Brief on 1/19/93. However, Judge Charles R.Weiner had already prejudged the case and entered a decision the day after appellee Day filed a Brief. Day's Brief was filed on 1/12/93 and the Order was entered the next day on 1/13/93. Gracey's right to a Reply Brief was critical since the Day Brief contained an important admission that the contract was silent on the interest rate after default(substantiating the appeal issue that 41 P.S.202 was the controlling law and the interest rate 6%).

The appeal issue is that the controlling laws for payment of post-judgment interest are 42 Pa.C.S.A. 8101 and 41 P.S.202 because the mortgage contract is silent on the interest rate after default. Day admits in the Brief that the mortgage contract matured, that judgment was confessed, and that no specific interest rate was defined after default. The Day Brief admission says, "The parties did not particularly define, in haec verba, any particular rate for interest after default".

That's what this appeal is all about. The core of the appeal is that the contract was silent on interest after default. Therefore, the post-judgment rate of interest is controlled by 41 P.S. 202 which states,

> "...reference in any document to an obligation to pay a sum of money with interest without specification of the applicable rate shall be construed to refer to the rate of interest of six per cent per annum".

Gracey was denied her due process right to bring those critical facts to the attention of the Court through a Reply Brief.

Gracey's right to a Reply Brief was imperative. The District Court did not consider the Reply Brief. The District Court docket is attached as APPENDIX "E" and proves Judge Charles R. Weiner entered the Order on 1/13/93, one day after the Day Brief was filed (item # 5). Gracey was denied her right to due process. As requested by appellee Day, the Court changed the issue to the maximum allowable contract rate and affirmed the Bankruptcy Court.

Gracey was also denied her right to respond to the Day's damaging derogatory personal tirade against Gracey proceeding pro se. Edith Gracey is a nursery school teacher with no legal training at all. Her former attorney has been disbarred and is in a federal prison for twelve years (he is convicted of manufacturing illegal drugs). Gracey is trying to unravel the legal errors and save her home from an unnecessary forced sale by the court. The Reply Brief was not a trivial desire to file one more document. It was a crucial response.

II.

DUE PROCESS WAS DENIED WHEN THE DISTRICT COURT WITHHELD GRACEY'S PORTIONS OF THE RECORD FROM THE THIRD CIRCUIT

In clear violation of FRAP Rule 11(6) the District Court Brief of Gracey was withheld and not included in the Record upon appeal to the Third Circuit. Local Rule 11.2 requires "In all pro se cases the entire record shall be certified and transmitted to the clerk of this court". The entire record was not transmitted. The certification of the District Court clerk (attached as APPENDIX "E-3") states clearly "Pleading #3 not included". "Original exhibits attached: NONE ". The Brief of appellant Gracey was not included in the Record to the Third Circuit and the Gracey Reply Brief was not included. The only part of the Record that was transmitted by the District Court to the Third Circuit appears to be the Brief of Appellee Day. Transmitting only the Day part of the record is highly prejudicial and denies Gracey due process.

The issue of the appeal is the overpayment of $35,530 to creditor Day. The Day Brief contained pivotal admissions which Gracey responded to in her Reply Brief. However, the decision of the District Court was already entered and therefore Judge Weiner did not include the Gracey Reply Brief in the decision making process (APPENDIX "E"). For that reason Gracey requested Oral Argument in the Third Circuit. However,local custom is to deny pro se appellants due process of Oral Argument. This local custom is contrary to the spirit of FRAP Rule 34(a). In the District Court there had been no hearing, no oral argument, no Reply Brief, no complete record sent to the Third Circuit (contrary to Local Rule 11.2 which says "In all pro se cases the entire record shall be certified and transmitted to the clerk of this Court"). The Third Circuit document "INFORMATION FOR PRO SE LITIGANTS" states on page 5: "The judges will very carefully analyze the lower court records".The District Court only transmitted the Day Brief. Gracey was denied Oral Argument to explain.

III.

THE CONTROLLING LAWS ON THE ISSUE OF THE CORRECT RATE OF POST-JUDGMENT INTEREST SHOULD BE 42 Pa.C.S.A 8101 AND 41 P.S.202

Two real estate properties of Edith Gracey were sold by the Bankruptcy Court. Creditor Barbara Day had filed a claim for a principal amount of $31,297. Day originally had a one year mortgage contract at 14% interest but confessed judgment and executed on the Judgment. Trustee Frederick Reigle, Esquire mistakenly overpaid Day post-judgment interest at the contract rate of 14%, instead of the legal post-judgment rate of 6%. The overpayment amounts to $35,530. Gracey objected to the overpayment of post-judgment interest. Day admits the contract did not specify a rate of interest after default or judgment. The controlling law is 42 Pa.C.S.A. 8101 which states,"..a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the judgment". The law in Pennsylvania is 41 P.S. 202 which establishes the rate of interest at 6%.

The cases which follow, other relevant cases, and laws were cited in the original objection of Gracey directly and by reference; included as substantive evidence at hearings; and cited in every document in the Lower Courts. There could be no mistake that the issue was the rate of post-judgment interest paid to Day. However,the Bankruptcy Court changed the issue to the maximum allowable contract rate. The two-part decision is attached as APPENDIX "C". On APPENDIX page "C-2" (footnote 1) the Court says, "Since neither party has provided us with sufficient information to calculate the maximum interest rate permitted to be assessed under 41 P.S.301(b)...". This proves that the contract rate was not even mentioned in any documents by either party because the issue was the post-judgment rate of interest. Other court decisions regarding the post-judgment rate of interest are uniform and consistent: when a contract is silent the lawful interest rate is 6%; controlling law is 42 Pa CSA 8101, 41 PS 202.

Some of the cases cited by Gracey were:

In re:Rorie,98 B.R.219(Bky.EDPA.1989);Judge Fox states,"Unless the mortgage agreement provides otherwise, post-judgment interest accrues at the lawful rate, 42 Pa.CSA 8101, which is defined by 41 P.S. 202 as 6% in Pennsylvania when the contract is silent". The Rorie case involves a residential mortgage contract, just like the Gracey case.

In re: Herbert,86 B.R. 433 (Bky.EDPA.1988), Judge Scholl states, "judgment creditor is entitled to interest on the judgment at the legal rate only, even if the rate of interest on the obligation on which the judgment is entered was greater". Herbert, like Gracey, includes a residential mortgage contract.

Crane Automotive, 98 B.R.236(Bky.WDPA.1989) Judge Bentz states,"Once the Bank reduced its claim to judgment, however, the legal rate of interest applied..". The Day claim involves a Bond and Mortgage just like the Crane case. Both are founded on a confession of judgment.

An important Pennsylvania decision, cited in the previous cases, says, "..it is the judgment itself which causes the law to interpose and regulate the rate of interest".

After Day confessed judgment the interest on that debt was controlled by 42 Pa.C.S.A. 8101 which says: "A judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment". Confession of judgment creates a legal metamorphosis. The debt must be recognized in it's new form.

The Bankruptcy Court Order (APPENDIX "C") and the District Court Order (APPENDIX "B") have ignored the issue of the post-judgment interest rate and changed the issue to the maximum contract rate . The Third Circuit sanctioned the Lower Courts without a complete record (as FRAP Rule 30 requires) and denied Oral Argument (as FRAP Rule 34[a] requires).

This U.S.Supreme Court has ruled that if a creditor is oversecured he is entitled to post-petition interest, but only at the statutory rate determined by each state (U.S. v. Ron Pair Enterprises,Inc.,489 U.S. 235,103 L.Ed2d,290,109 S.Ct.1029(1989).The Lower Courts did not follow this decision.

Day admits that the one year mortgage matured, that judgment was confessed (Day executed on the Judgment in Berks County Court), and that the contract was silent on the rate of interest after default. The well established post-judgment statutory rate in Pennsylvania is determined by 42 Pa.C.S.A. 8101 and 41 P.S. 202 as 6%. If Day is entitled to post-petition interest the statutory rate would be 6%.

The appeal in the District Court did not take a normal course because the decision was issued before the scheduled Reply Brief was filed which denied the right to due process.

The cases presented by Gracey are from three federal bankruptcy judges in three different districts in Pennsylvania, plus the U.S.Supreme Court. Those decisions, and others, substantiate that Day was overpaid by Trustee Reigle who assumed a rate of 14% applied rather than the statutory rate of 6%. However, the Lower Courts changed the issue to usury and ruled on the maximum contract rate instead of the post-judgment rate of interest.

This pro se appellant was without necessary oral argument. The District Court did not review the Gracey Reply Brief and the Third Circuit reviewed an incomplete record (APPENDIX "E-3") without oral argument.

CONCLUSION

Edith Mae Gracey prays that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

Edith Mae Gracey

Edith Mae Gracey, pro se

APPENDIXES

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 93-1048

EDITH M.GRACEY,
Appellant

v.

BARBARA DAY
FREDERICK L.REIGLE,ESQ.(Trustee);
DALE E.LAPP,ESQ.(Trustee);
FREDERICK J.BAKER,ESQ.Trustee

On Appeal From United States District Court
For the Eastern District of Pennsylvania
(D.C.Civil Action No.92-07237)
District Judge: Honorable Charles R.Weiner

Submitted June 23,1993
BEFORE: STAPLETON,SCIRICA,and GARTH,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgment of the district court entered January 14,1993 be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,
(s)WALTER STAPLETON
Circuit Judge
ATTEST:(s)P.Douglas Sisk
Clerk

Dated:August 10,1993

APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN THE MATTER OF: C.A.NO.92-7237
EDITH M.GRACEY BANKRUPTCY NO.84-778T

MEMO/ORDER

WEINER,J. JANUARY 13,1993

Debtor,Edith M.Gracey,appeals from the portion of the Orders of the Bankruptcy Court of September 29,1992 and November 20,1992 which held that the maximum interest rate on residential mortgages which claimant,Barbara Day,may charge debtor under Act 6,Pa.Stat.Ann. tit.41,301(b)is the rate equal to the Monthly Index of Long Term United States Government Bank Yields for preceding calendar month (i.e. the second calendar month preceding the month in which the note was executed) plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum. Debtor contends that the maximum interest rate the claimant is entitled to is the general post-judgment interest rate of 6% per annum contained in Pa.Stat.Ann.tit. 41,201. Debtor is incorrect.

Pa.Stat.Ann.tit.41, 201 states:

> Except as provided in Article III of this act the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars($50,000) or less in all cases where no express contract shall have been made for a less rate shall be six per cent per annum

(emphasis added). Pa.Stat.Ann.tit.41,301(b), which is part of Article III of Act 6,states:

> The maximum lawful rate of interest for residential mortgages,as defined in this act,entered into or contracted for during any calendar month shall be equal to the Monthly Index of Long Term United States Government Bond Yields for the second preceding calendar month plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum.

The debtor admits that the mortgage she gave to claimant is a residential mortgage.Pa. Stat.Ann.tit.41,301(b) specifically provides for the maximum lawful rate of interest for residential mortgages and, therefore,it and not 201 is controlling here.

The parties agree that the debtor gave the residential mortgage to the claimant on September 23,1982 and that the mortgage provides for interest to be assessed at 14%.

The pertinent portion of the August 14,1992 edition of the Pennsylvania Bulletin,vol.12, no.33,which claimant provided to the Bankruptcy Court correctly determined that the 14% rate of interest sought by the claimant does not exceed the maximum rate permitted to be collected under 301.The Order of the Bankruptcy Court entered on November 20,1992 is, therefore, AFFIRMED.

IT IS SO ORDERED.

(s)CHARLES R.WEINER

ENTERED;1/14/93

APPENDIX "C"

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:
~~EDITH~~ M.GRACEY, Case No.84-00778T
Debtor

ORDER

AND NOW,this 29th day of September,1992, it is ORDERED that debtor's objection to the proof of claim filed by Barbara Day ("claimant") is SUSTAINED to the extent that the interest rate sought to be collected by claimant exceeds the maximum interest rate permitted to be assessed under Act 6,41 P.S.101 et seq.see,P2 of this order,infra,[1] and is DENIED in all other respects as the court finds that (1)this loan does not qualify as a "business loan" under 41 P.S.301(f)(v) since claimant has not produced an affidavit signed by debtor which sets forth the intended use of the proceeds,10 Pa.Code 7.2;[2] and (2) the maximum interest rate which claimant may charge debtor under Act 6 is the rate equal to the Monthly Index of Long Term United States Government Bank Yields for the

second preceding calendar month(i.e.the second calendar month preceding the month in which the note was executed) plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum[3] 41 P.S.301(b);Gringsby v. Thorp Consumer Discount Company (In re Gringsby),Adv.No. 90-0415,Case No.90-10990S(Bankr.E.D.Pa.October 3,1990);and (3) all other objections raised by debtor are without merit.

Reading,PA

(s)Thomas M.Twardowski
Bankruptcy Judge

FOOTNOTES

1.Since neither party has provided us with sufficient information to calculate the maximum interest rate permitted to be assessed under 41P.S.301(b),we cannot determine on this record whether the interest rate actually charged by claimant exceeds this rate and we shall leave it to the parties to calculate this rate.The parties shall submit said calculations by November 2, 1992.

2.This is the only defense raised by claimant in response to debtor's argument that Act 6 limits the interest rate which claimant may charge debtor.Specifically,claimant maintains that the definition of "business loan"found in the regulations codified at 10 Pa.Code 7.2 is written in the disjunctive and therefore requires either a finding that the borrower exercised actual control over the managerial

decisions of the enterprise or an affidavit signed by the borrower setting forth the intended use of the proceeds.We find claimant's argument without merit since a simple review of this regulation reveals that the definition of "business loan" is not written in the disjunctive and none of the cases cited by claimant support claimant's position,see,East Coast Management,Inc.v. McLaughlin,533 F.Supp.439,441-442(E.D.Pa. 1982)(wherein the district court found that the facts in the case before it failed both prongs of the "business loan"test set forth in 10 Pa.Code 7.2);Jungkurth v.Eastern Financial Services,Inc.(In re Jungkurth),74 B.R.323 (Bankr.EDPa.1987);Schlag v Mendelson (Matter of Schlag),60 B.R.749,751(Bankr.WD.Pa.1986) (wherein the bankruptcy court correctly concluded that 41 P.S. 301(f)(i)-(v)[and not 10 Pa.Code 7.2]is written in the disjunctive).
3.As stated previously in note 1.supra, neither claimant nor debtor provided us with sufficient information to calculate the maximum interest rate permitted to be charged in this transaction under 41 P.S.301(b) and we leave it to the parties to calculate this rate.

"C-4"

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:
EDITH M.GRACEY,debtor : Case No.84-00778T

ORDER

AND NOW, this 20th day of November,1992 it is ORDERED that debtor's motion for reconsideration of this court's September 29, 1992 order is DENIED as the court finds that no error was committed in our September 29, 1992 order and that order must stand on its merits.[1]

Reading,PA

(s)Thomas M.Twardowski
Bankruptcy Judge

1.Our September 29,1992 order sustained debtor's objection to claimant's proof of claim but only to the extent that the interest rate sought to be collected by claimant exceeded the maximum interest rate permitted to be assessed under Act 6,41 P.S.301(b) contains an exception to the general six percent (6%) interest rate limitation contained in Act 6,41 P.S.201.Specifically,41 P.S.201 states:

> Except as provided in Article III of this act,the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000)or less in all cases where no express contract shall have been made for a less rate shall be 6%per annum.

(emphasis supplied). 41 P.S. 301(b), which is part of Article III of Act 6, states:

> The maximum lawful rate of interest for residential mortgages,as defined in this act,entered into or contracted for during any calendar month shall be equal to the Monthly Index of Long Term United States Government Bond Yields for the second preceding calendar month plus an additional two and one-half per cent per annum rounded off to the nearest quarter of one per cent per annum.

Instantly,debtor maintains that the mortgage she gave to claimant is a "residential mortgage"under Act 6 and our September 29,1992order correctly found in debtors favor on this point.However,our September 29,1992 order further correctly found that the maximum lawful rate of interest on residential mortgages must be determined by 41 PS 301(b) and not by 41 P.S.201.See,Gringsby v.Thorp Consumer Discount Company(In re Gringsby, Adv.No.90-10990S(Bankr.EDPA October 3,1990). Although debtor continues to misconstrue the interplay between 41 PS 201 and 301(b),our analysis of this issue was correct and debtor's motion for reconsideration must be denied.We note that the case relied upon by debtor,East Coast Management v.McLaughlin, 533 F.Supp.439(EDPA.1982),did not discuss the interplay between 41 PS 201 and 301(b) and therefore is neither helpful nor controlling.

Finally,we note that,as explained in footnotes 1 and 3 of our September 29,1992 order,neither party provided us with sufficient information at the hearing held on debtor's objection to claimant's proof of claim to enable us to calculate the maximum rate of interest

permitted to be assessed under 41 PS 301(b) and therefore,we could not determine in our September 29,1992 order whether the interest rate sought to be collected by claimant exceeded this rate.In fact,the last sentence on footnote 1 directed the parties to submit their calculations of the appropriate interest rate under 41 PS 301(b) by November 2,1992.

Claimant has now attached as Exhibit"A"to her answer to debtor's motion for reconsideration a copy of the pertinent portion of the August 14,1982 edition of the Pennsylvania Bulletin, vol.12,no.33,which states that the maximum lawful rate of interest for residential mortgages for the month of September 1982 is fifteen and one-half percent(15 1/2 %).As the parties both concede that debtor gave the mortgage to claimant on September 23,1982 and that the mortgage provides for interest to be assessed at fourteen percent(14%),we are now able to determine that the fourteen percent (14%)interest rate sought to be collected by claimant does not exceed the maximum rate permitted to be collected under 41 PS 301(b). Therefore,although debtor's theory that the mortgage she gave to claimant qualified as a "residential mortgage"under Act 6 was correct her claim that the interest rate sought to be collected by claimant violated Act 6 was incorrect and our September 29,1992 order, which sustained debtor's objection to claimant's proof of claim,but only to the extent that the interest rate sought to be collected by claimant exceeds the maximum interest rate permitted to be assessed under Act 6,41 PS 301(b),was correctly decided and need not be modified on reconsideration.

APPENDIX "D"

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NO. 93-1048

EDITH M. GRACEY,
Appellant

v.

BARBARA DAY
FREDERICK L. REIGLE,ESQ.(Trustee);
DALE E. LAPP,ESQ.(Trustee);
FREDERICK J. BAKER,ESQ.Trustee

SUR PETITION FOR REHEARING

BEFORE: SLOVITER, CHIEF JUDGE, BECKER, STAPELTON MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, and GARTH,
Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT
(s) Walter K.Stapleton
Circuit Judge

Dated: SEP 9-1993

APPENDIX "E"

U.S.DISTRICT COURT DOCKET:CASE 92cv7237

Proceedings include all events. f-ST

2:92cv7237 GRACEY,et al v. DAY

12/17/92 1 Certificate of Appeal of Edith M. Gracey from the Order of Bankruptcy Judge Thomas M.Twardowski,11/20/92 Appellant's brief due 1/1/93 for EDITH M.GRACEY(cj)[entry 12/18/92]

12/17/92 2 Briefing Schedule:mailed to counsel 12/18/92(cj) [entry date 12/18/92]

12/17/92 --Standard Case Management Track.(cj) [Entry date 12/18/92]

1/4/93 3 Appellants brief by APPELLANT EDITH M.GRACEY.(lm)[Entry date 01/05/93]

1/12/93 4 Appellees brief by APPELLEE BARBARA DAY,certificate of service.(sl)

1/13/93 5 MEMO/ORDER THAT THE BANKRUPTCY COURT CORRECTLY DETERMINED THAT THE 14% RATE OF INTEREST SOUGHT BY THE CLAIMANT DOES NOT EXCEED THE MAXIMUM RATE PERMITTED TO BE COLLECTED UNDER SECTION 301.

APPENDIX "E-2"(DISTRICT DOCKET-cont.)

THE ORDER OF THE BANKRUPTCY COURT ENTERED ON 11/20/92 IS,THEREFORE AFFIRMED.(SIGNED BY JUDGE CHARLES R.WEINER) 1/14/93 ENTERED AND COPIES MAILED.(sl) [Entry 1/14/93]

1/13/93 -- All papers from C.A.92-7380 have been placed in C.A.92-7237 pursuant to order filed on 1/13/93.(sl) [Entry date 01/14/93]

1/13/93 -- Case closed(kv)[Entry date 1/21/93

1/19/93 6 Reply brief by APPELLANT EDITH M. GRACEY,certificate of service (sl)

1/19/93 7 Notice of appeal by APPELLANT EDITH M.GRACEY.Fee Status:paid.Appeal record due on 2/18/93.Copies to JUDGE CHARLES R.WEINER,Clerk USCA, Appeals Clerk,and GRACEY,E.,JOSEPH SIMMONS,HON.BRUCE I.FOX,HON.DAVID A SCHOLL,HON.THOMAS M.TWARDOWSKI, FREDERIC J.BAKER,DALE E.LAPP, FREDERICK L.REIGLE,MARK L.TUNNELL, EDITH M.GRACEY (sl)[Entry 1/20/93]

APPENDIX "E-3"
("DISTRICT COURT DOCKET"-continued)

1/19/93	8	Copy of Clerk's notice to USCA re: [7-1] appeal.(sl) [Entry 1/20/93]
1/26/93	9	Copy of TPO form.[7-1] appeal(sl)
1/26/93	--	Notice of Docketing ROA from USCA Re:[7-1]appeal USCA NUMBER:93-1048 1/25/93 (sl) [Entry date 1/27/93]

RECORD CERTIFIED:DISTRICT COURT CASE 92-7237

I, MICHAEL E. KUNZ Clerk of the United States District Court in and for the Eastern District of Pennsylvania,do hereby CERTIFY that the foregoing copy of the docket entries is a true copy and that the annexed and foregoing are the original papers filed in this case.

I FURTHER CERTIFY that the following original exhibits are attached: None

(Pleading # 3 not included) (Papers from C.A. # 92-7380 placed in C.A.92-7237 pursuant to order filed 1/13/93 are included)

By:(s)Mary L. McKenna
Deputy Clerk

2/23/93